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**IN THE
COURT OF APPEALS OF INDIANA**

| | | |
|----------------------|---|-----------------------|
| DEAN W. KIMBLEY, |) | |
| |) | |
| Appellant-Defendant, |) | |
| |) | |
| vs. |) | No. 49A02-0610-CR-911 |
| |) | |
| STATE OF INDIANA, |) | |
| |) | |
| Appellee-Plaintiff. |) | |

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara Collins, Judge
Cause No. 49F08-0411-CM-211136

June 20, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Dean W. Kimbley appeals his conviction for operating a motor vehicle while intoxicated,¹ a Class A misdemeanor, contending that there was insufficient evidence to support his conviction. We affirm.

FACTS AND PROCEDURAL HISTORY

The evidence most favorable to the conviction shows that a motorist called 911 to report that a 2004 Chevy Silverado pick-up truck traveling on Meridian Street in Marion County crossed about a foot over the center double yellow line. Sheriff's Deputy Patrick Nielander responded to the dispatch, and the motorist, who had continued to follow the truck, pointed the truck out to Deputy Nielander. As Deputy Nielander followed the truck, he noticed that the driver was traveling about sixty miles per hour in a forty-mile-per-hour zone and weaving within his lane. Deputy Nielander stopped the truck and identified Kimbley as the driver. Deputy Woody Burton also responded to the dispatch and arrived shortly after the stop. Both Deputies Nielander and Burton testified that they noticed an odor of alcoholic beverage on Kimbley's breath, that his eyes were red and bloodshot, and that his speech was slurred. Kimbley failed the horizontal gaze nystagmus test. Although Kimbley staggered some and was unable to perform the other field sobriety tests, he claimed knee and back injuries.

¹ See Ind. Code § 9-30-5-2(b).

DISCUSSION AND DECISION

Our standard of review for sufficiency of the evidence is well settled. *Altes v. State*, 822 N.E.2d 1116, 1121 (Ind. Ct. App. 2005), *trans. denied*. We will neither reweigh the evidence nor assess the credibility of witnesses. *Id.* We will consider only the evidence most favorable to the judgment together with all reasonable and logical inferences to be drawn therefrom. *Id.* If there is substantial evidence of probative value to support the judgment of the trier of fact, we will affirm. *Id.*

Here, Kimbley crossed the yellow line even briefly, weaved within his own lane, drove sixty miles per hour in a forty-mile-per-hour zone, smelled of alcoholic beverage, had bloodshot eyes and slurred speech, and failed to pass the horizontal gaze nystagmus test. The factors are sufficient evidence of intoxication to support Kimbley's conviction for operating a vehicle while intoxicated. *See Weaver*, 702 N.E.2d 750, 753 (Ind. Ct. App. 1998).

Affirmed.

DARDEN, J., and MATHIAS, J., concur.